

(2002) 12 KAR CK 0037
In the Karnataka High Court
Case No : Writ Petition No. 46964 of 2001 etc.

Indian Bank and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2003) 1 KCCR 501 : (2004) 55 SCL 138

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : A. Keshava Bhat, K. Shrikrishna, E.S. Indires, Narayan Bhat and Udaya Holla, for Subba Rao and Co., Gayatri Balu, for Khaithan and Co. and Subba Rao and Co, for the Appellant; Shoba Patil, HCGP for R1 to 3, R4 and 6, Gayatri Balu, for Khaithan and Co. for R3 and R4 Udaya Holla and Gayatri Balu, for R6 A.K. Patil, Addl. CGSC for R7 and R8, Narayana Bhat, Subbarao and Co. for R3 and 4, T. Prakash, for R5 to 8, R.V. Srinivasa Reddy, for R9 to 11, C.S. Mohan, for R12 and Party in person for R13 to 55, for the Respondent

Judgement

Gopala Gowda, J.—All these Writ Petitions pertain to M/s. Siruguppa Sugars and Chemicals, Gowribidanur in Kolar District (hereinafter referred to as "the factory"). Hence, they are clubbed together, heard and this common order is passed.

2. The factory filed W.P.No. 44063/2001 praying to quash the order at Annexure-L dated 26.9.2001 passed by the Commissioner for cane Development and Director of Sugar (hereinafter referred to as "the Cane Director") and the Notice at Annexure-M dated 4.10.2001 issued by the Tahsildar calling upon the factory to pay Rs. 4,23,75,000/- due to the cane growers (hereinafter referred to as "farmers" towards the cane supplied with interest at 15% per annum within seven days.

3. The Mysugar Co. Ltd., (hereinafter referred to as "the Company") has filed W.P.No. 45890/2001 seeking to quash the auction notice at Annexure-G dated

27.11.2001 issued by the Tahsildar for auctioning the properties of the petitioner and to direct the factory to pay a sum of Rs. 86,56,459.80 with interest. The said amount is claimed to be due towards the sugarcane supplied from 3.5.1992 to 30.6.1992. It is stated that the four cheques issued by the factory for a sum of rupees five lakhs each had been bounced and the Company has filed suit in O.S. No. 163/93 for recovery of the aforesaid amount. It is also stated that it has obtained attachment order before judgment against the factory.

4. The Indian Bank (hereinafter referred to as "the Bank") has filed W.P.No. 46964/2001 seeking to restrain the respondents from putting up the factory, its plant, machinery, land and other assets for public auction for sale till the arrears of the Bank are cleared or, in the alternative, to direct the Government of Karnataka and the Deputy Commissioner of Kolar District to clear its dues before disbursing the sale proceeds of the factory and to declare the auction of the movable and immovable properties of the factory conducted on 14.12.2001 as null and void. The Bank claims that it is a secured creditor of the factory in respect of the loan.

5. W.P.Nos. 46349-50/2001 is filed on behalf of the farmers by one Sri C.S. Mohan, President of Gowribidanur Taluk Raitha Sangha and another farmer seeking to quash the order at Annexure-D dated 11.12.2001 passed by the Board for Industrial and Financial Reconstruction in Case No. 371/2001 suspending the recovery action in respect of the cane dues from the factory for a period of six months. It is claimed that a sum of 1.37 crore is due for the year 1999-2000, 2.87 crores for the year 2000-01 and 1 crore for the year 1993-94 towards the sugarcane supplied by the farmers to the factory in terms of the Sugarcane (control) Order, 1966 (hereinafter referred to as "the Control Order").

6. The Petitioners claim first priority over others for recovering the dues from the factory. Since the sale of sugar produced by the factory is subject to payment of excise dues under Rule 4(1) of the Central Excise (No.2) Rules, 2001, the Central Government Standing Counsel also claims priority of its dues. Since it is a statutory due, appropriate direction will be issued in this regard.

7. After hearing the Learned Counsel for the parties at length, the Court prima facie found that except the Writ Petition filed by the farmers, the other three Writ Petitions are liable to be dismissed, that being the position, question of priority over the claim does not arise. Accordingly, the prayers made in the Writ Petitions are considered on merits in the succeeding paragraphs.

8 (i). So far as the Writ Petition filed by the Bank is concerned, the former portion of the prayer to restrain the respondents from putting the factory and its properties for sale in public auction to recover the amount due to the farmers, is nothing but an injunctive prayer, such a prayer cannot be granted in writ jurisdiction. Even otherwise, the prayer has become infructuous as already public auction took place on 14.12.2001. That is the reason for the Bank to seek a further prayer to declare the auction conducted as null and void.

(ii) The alternative prayer of the Bank to direct respondents 1 and 2 to clear its dues before disbursing the sale proceeds, cannot be granted by this Court. The Bank has to prove its claim by producing documents and adducing evidence. That cannot be done in writ jurisdiction. The Bank will have to approach the Debt Recovery Tribunal (in short DRT) to enforce its contractual right by filing an application under the provisions of Debt Recovery Tribunals Act 1993 and Rules by paying requisite Court fee on the claim. Without adjudicating the claim and counter claim of the parties by the DRT and without paying the Court fee on such claim the prayer of the Bank cannot be granted by this Court. In addition to that, the contract is between the Bank and the factory. The State Government and the Deputy Commissioner are not parties to the same. That being so, they cannot be directed to clear the dues of the Bank before disbursing the sale proceeds.

(iii) The third prayer of the Bank to declare the auction conducted on 14.12.2001 as null and void, cannot be granted at the instance of the Bank. The prayer so made is contrary to the alternative prayer sought, which is dealt with in sub-para (ii) above. In that, the Bank seeks clearance of its dues before disbursing the sale proceeds. Thus, the prayers are conflicting with each other. Be that as it may, unless the Bank establish its claim before the DRT, the Writ Petition filed by it cannot be entertained by this Court and the extraordinary jurisdiction and discretionary power cannot be exercised. Hence, the Writ Petition is liable to be dismissed.

9. So far as the Writ Petition filed by the Mysugar Company is concerned, the Writ Petition is liable to be dismissed in limine as already it has filed original suit in O.S.No. 163/93 to recover its dues which is still pending. The Company cannot maintain parallel proceedings in respect of the same claim before this Court and the Civil Court. More over, the claim pertains to the year 1992. The Company having already approached the Civil Court to recover the amounts claimed by it against the factory, it cannot seek quashing of the public auction notice and direction to pay the outstanding amount due to it. In other words, the Writ Petition filed by the Company is not maintainable and the same is liable to be dismissed.

10 (i) The Writ Petition filed by the factory seeking to quash the order passed by the Cane Director and the notice issued by the Tahsildar is also liable to be dismissed. Under Clause 3(3) of the Control Order, the factory has to pay the price of the sugarcane supplied within fourteen days from the date of delivery of sugarcane under the provisions of the Control Order. It is the statutory liability of the factory to pay the price of the sugarcane to the farmers. Since the factory failed to pay the same, the Cane Director has passed the impugned order at Annexure-L. The same cannot be quashed for any reason as the same is in accordance with law. Since the impugned notice at Annexure-M is issued by the Tahsildar pursuant to the order at Annexure-L, the Recovery Certificate issued by the Cane Director under the provisions of the Control Order, cannot be quashed.

(ii) The Contention of Mr. Udaya Holla, learned Counsel for the factory that the

matter be remanded back to the Cane Director to conduct an enquiry as contemplated under Clause 3(8) of the Control Order to determine the amount due to the farmers, is wholly untenable and deserves rejection. Such enquiry is warranted where the amount is not determined. In the instant case, the Cane Director has referred to various documents and the admission of Ashok Kowshik, the Director of the factory that a sum of Rs. 424.47 lakhs is due. The details of the same are also furnished and the same is referred to in paragraph 4(a) of the impugned order. Even in the meetings held on 27.8.2001 and 28.8.2001 under the chairmanship of Hon"ble Minister for animal husbandary and Sugar, it was noticed that the factory owes Rs. 423.75 lakhs. Even in the Annual Report and Accounts of the factory at Annexure-D, the amount due to the farmers is reflected. Since the amount due to the farmers in respect of the sugarcane supplied to the factory for the periods in question is admitted with details, the factory cannot have any grievance with the impugned order and the notice.

(iii) The grievance sought to be made-out in the additional affidavit filed by the Director of the factory that procedure contemplated u/s 5A of the Control Order is not followed and that the factory is not liable to pay any amount under Clause 5-A of the Control Order, cannot be accepted. What is sought to be recovered is only the admitted amount. The claim of the farmers do not pertain to additional price of the sugarcane under Clause 5-A of the Control Order. The additional affidavit of the Director of factory is contrary to his own admissions in various meetings that were conducted on the issue pertaining to non-payment of dues of farmers. Hence, the contention raised and the ground sought to be made-out in this regard are wholly untenable.

11 (i). The Writ Petitions filed on behalf of the farmers has to be allowed. The impugned order at Annexure-D dated 11.12.2001 is passed by the BIFR in exercise of the power conferred u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA Act") suspending the recovery action against the factory for a period of six weeks. As of now, the order has spent itself and it is no more in force. Hence, quashing of the said order does not arise. The first prayer made in the Writ Petition thus became infructuous.

(ii) The second and consequential prayers are not properly sought in the Writ Petitions. However, the farmers have compulsorily supplied their sugarcane to the factory in terms of the Control Order but they are not paid the price of the same. Within fourteen days of supply, they were entitled for payment. Since the same was not made, the Cane Director has rightly passed the Order for recovery of the same. The statutory right of the farmers for payment of sugarcane price for the supplied to the factory for the period in question cannot be deprived. Hence, the Court moulds the relief and direct payment of their dues. Mr. C. Mohan, party-in-person, has rightly, placed reliance upon the decision in the case of STATE OF MADHYA PRADESH v. JAORA SUGAR MILLS LTD., 1997 AIR SCW 189 the Supreme Court. At paragraph 13 it is held as under:-

"13. It would thus be clear that the Cane Commissioner having power to compel the cane growers to supply cane to the factory Khandsari unit, he has incidental power and duty bound to ensure payment of the price of the sugarcane supplied by the sugarcane grower. The price fixed or agreed is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or Khandsari unit."

The law so declared by the Supreme Court cast a duty upon the Cane Director to ensure payment of price of the sugarcane supplied by the farmers. That is what exactly done in the instant case. No one, including this Court, come in the way of exercising the power by the Cane Director and deprive the legitimate payment due to the farmers. The farmers are entitled for the statutory and legitimate payment at all times and under all circumstances.

12. The contention that Recovery Certificate cannot be enforced when the application is pending before the BIFR, does not hold water. The Control Order is a special order passed u/s 3 of the Essential Commodities Act, 1955. Hence, the provisions of the Control Order shall prevail over the SICA Act. A Division Bench of this Court in the case of INDIAN PLYWOOD MANUFACTURING COMPANY LTD v. THE COMMISSIONER OF LABOUR IN KARNATAKA, 1998 (6) KAR L.J. 280 and also the judgments of the Apex Court reported in 1999 LAB I.C. 1157, 1997(2) LLJ 1032 and BSI Ltd. and Another, etc. Vs. Gift Holdings Pvt. Ltd. and Another, etc., and 954 have held that recovery of statutory dues to the parties is not barred by the provisions of Section 22 of SICA Act. The same principle holds good in respect of farmers under the Control Order. Thus, the contention urged on behalf of the factory that Section 22 of SICA Act is bar to recover the amount from it, does not merit consideration and the same is rejected.

13. For the reasons stated above, W.P. Nos. 46964/2001, 44063/ 2001 and 45890/2001 are dismissed. W.P.Nos. 46349-50/2001 is allowed. The Deputy Commissioner is directed to sell the sugar under lock and seal. After paying the excise dues, the balance amount shall be disbursed to the farmers.